80-2007

NO. _____

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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

SURETY MANAGERS, INC.,

Petitioner,

vs.

M. LEON STANFORD, JR.,
REBEKAH LYNN STANFORD, and
M. LEON STANFORD, SR.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION

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QUESTION PRESENTED

In light of the applicable law of the State of Georgia, should Petitioner, a surety, be barred by summary judgment from suing Respondent, Indemnitor, for breach of several different and comprehensive contractual obligations under an indemnity agreement where a prior foreclosure sale, under power in a security deed, upon one of several forms of collateral, was not confirmed?

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 633 F.2d 709 (5th Cir. 1981) and is set out on pages A-1-A-7 of the Appendix.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered in December 29, 1980. Timely Petition for Rehearing was denied on February 27, 1981. Motion for Stay of Mandate was granted on March 16, 1981, to and including April 15, 1981. Motion for Further Stay of Mandate was denied on April 21,

1981. The Mandate issued April 21, 1981. The jurisdiction of this Court is invoked under 28 USC Sec. 1254 (1) and United States Supreme Court Rule 17.1 (a), 28 USC.

STATUTE INVOLVED

Georgia Code Section 67-1503
Confirmation of sales under powers

When any real estate is sold on foreclosure, without legal process, under powers contained in security deeds, mortgages or other lien contracts, and at such sale said real estate does not bring the amount of the debt secured by such deed, mortgage, or contract, no action may be taken to obtain a deficiency judgment unless the person instituting the foreclosure proceedings shall, within 30 days after such sale, report the sale to the judge of the superior court of the county in which the land lies for confirmation and approval, and obtains an order of confirmation and approval thereon. (Acts 1935, p. 381.)

STATEMENT OF THE CASE

On August 31, 1978, Petitioner, hereinafter referred to as "Surety" sued Defendant, M. Leon Stanford, Jr., hereinafter referred to as "Stanford, Jr." for multiple breaches of an agent's contract as a bail bonding agent, and sued Respondent, M. Leon Stanford, Sr., hereinafter referred to as "Indemnitor", for breach of contract to guarantee the full and complete payment and performance by Stanford, Jr., of each and all of the provisions, conditions covenants and agreements of the agency contract (R-3, 4). Federal jurisdiction in the United States District Court for the Northern District of Georgia was based upon diversity of citizenship (R-3). The Indemnity Agreement (R-4) is set forth on pages E-1-E-9 of the Appendix.

The Agent's contract is set forth on pages F-1-F-6 of the Appendix.

Under the Indemnity Agreement Paragraph "3. Guarantee", specifies the basic contractual obligations of Indemnitor. Various forms of contractual security were provided, including "Deed to Secure Debt" and "All Buildup Funds on Deposit with Surety Managers, Inc.", which were listed under Paragraph "1. d." as deposited and pledged by Indemnitor at the time of the signing of the Indemnity Agreement.

There was obligation of Indemnitor to make future deposits on certain conditions pursuant to Paragraph "6. Deposit of Reserve".

The said agreement provides further under Paragraph "4. Collateral":

> "a. The collateral deposited or pledged by each Indemnitor is that set forth in item d. of the Schedule and such other collateral as may from time to time be deposited or pledged by such Indemnitor. It is security for the performance by each Indemnitor of his Guarantee Agreement as set forth in paragraph 3. above."

In fact the collateral included two security deeds on two different parcels of land, referred to as the "Glenwood Property" and the "Hardendorf Property" (R-73, 74, 79, 80, 81).

Numerous waivers and limitations are agreed to by Indemnitor in Paragraphs "7"-"11".

On July 4, 1978, Surety foreclosed on both parcels (R-74, 18, 42). Each security deed provided collateral for a separate note of $20,000 (R-452). Each note and each security deed provided part of the collateral for all of the obligation of Stanford, Sr. (R-452, 79, 80).

Though the foreclosure sale of the "Hardendorf Property" was confirmed, the foreclosure sale of the "Glenwood Property" was not (R-440-443, 452, 453).

On February 21, 1979, Indemnitor filed an amended defense, contending that the lack of confirmation of the foreclosure sale of the "Glenwood Property" barred Surety's Suit against him. (R-455).

On February 27, 1979, Motion for Summary Judgment was filed by Indemnitor, based on that defense (R-458). Surety responded that the lack of confirmation of one of the two foreclosure sales did not bar Surety's contractual remedies against Indemnitor. (R-478-491).

On June 27, 1979, the District Court granted the Motion for Summary Judgment of Indemnitor on the ground that the lack of confirmation barred Surety's Suit against him. (R-514-519, 521). The District Court opinion is set forth on pages B-1-B-9 of the Appendix. Judgment was entered March 14, 1980.

As aforementioned, the District Court ruling was affirmed by the United States Court of Appeals for the Fifth Circuit.

REASONS WHY THE WRIT SHOULD BE GRANTED

Surety earnestly contends that the United States Court of Appeals for the Fifth Circuit has erroneously decided, in this case, an important state question in a way which is in conflict with applicable state law and in conflict with a decision of its own, and has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by the District Court as to call for an exercise of this Court's power of supervision.

The high respect which Petitioner holds for the Court below to the contrary notwithstanding, Surety infers that the substantial error below is rooted in the misconstruction of the facts as they relate to the Georgia Law. Consequently, Surety elucidates more factual detail herein than normally would be the case.

Georgia Code Section 67-1503 provides:

> When any real estate is sold on foreclosure, without legal process, under powers contained in security deeds, mortgages or other lien contracts, and at such sale *said real estate does not bring the amount of the debt secured by such deed*, mortgage, or contract no action may be taken to obtain a *deficiency judgment* unless the person instituting the foreclosure proceedings shall, within 30 days after such sale, report the sale to the judge of the superior court of the county in which the land lies for confirmation and approval, and obtains an order of confirmation and approval thereon. (*Emphasis Supplied*)

The following constructions have been enunciated by the Georgia appellate courts:

> The statute is in derogation of the common law and must be strictly construed. *First National Bank & Trust Co. v. Kunes, et al*, 128 Ga. App. 565, 566 (1973).

Failure to confirm does not prevent a creditor from pursuing other contractual security. *Salter v. Bank of Commerce*, 189 Ga. 328 (1939). *Marler v. Rockmart Bank*, 146 Ga. App. 548 (1978). *Turpin v. North American Acceptance Corp.*, 119 Ga. App. 212 (1969).

An excellent elucidation of the meanings of the statute is in the case of *Gentry v. Hibbler-Barnes Co., etc.*, 113 Ga. App. 1 (1966), as follows:

> 1. A litigant may, *either consecutively or concurrently*, pursue any number of consistent remedies to enfor

the payment of a debt until it is satisfied. "Obtaining a judgment on the note and foreclosure of the security device are consistent remedies, and the utilization of one will not constitute either an election or abandonment of the other." *Hopkins v. West Publishing Co.*, 106 Ga. App. 596 (2) (127 SE2d 849). See *Pioneer Investments, Inc. v. Adrine*, 97 Ga. App. 520 (2) (103 SE2d (686).

2. Black's Law Dictionary defines "deficiency" as "that part of a debt secured by mortgage not realized from sale of mortgaged property," citing *Harrow v. Metropolitan Life Ins. Co.*, 285 Mich. 349 (280 NW 785) and continues: "A judgment or decree for the amount of such deficiency is called a 'deficiency judgment' or 'decree'. *Phillips v. Union Central Life Ins. Co.*, C.C.A. Minn., 88 F2d 188, 189." Ga.L. 1935, p. 381, codified as Code Ann. §37-608-37-611, is entitled, "Foreclosure sales; deficiency judgments," and the caption of the Act recites that its purposes are (1) to provide for confirmation of sales under foreclosure proceedings, (2) to limit and abate deficiency judgments on secured debts, and (3) to provide for the advertisement of foreclosure sales. Code Ann. §37-608 (*now 67-1503*) lays down a condition precedent to obtaining a deficiency judgment in cases where "any real estate is sold on foreclosure, without legal process, under powers contained in security deeds," and the sale does not cover the amount of the debt. On its face, therefore, it refers only to the foreclosure procedure. Code Ann. §37-611 requires advertisement of the time and place of sale; this section and the Act generally were held unconstitutional in *Atlantic Loan Co. v. Peterson*, 181 Ga. 266 (182 SE 15) as to pre-existing contracts where the security deed contained contradictory provisions as to sale on default. The court in its explication pointed out that the Act was remedial in nature, adding: "In this case we have the promise to pay the debt as the primary obligation, and the power of sale as a remedy." P. 270. The method of exercising the power of sale, and

the legal consequences of the sale itself, constitute the subject matter of the Act, and the remedy by sale will be taken to have satisfied the primary obligation unless the creditor conforms to the law by making a proper showing that the security in fact brought in its true market value, which is then credited against the primary obligation. *There is nothing in this or any other law which says that the creditor may not, if he chooses, obtain satisfaction of the debt by reducing it to judgment and levying it on whatever property he chooses, whether or not it has been pledged as security for the particular debt evidenced by the note. The only defense to the actions on certain promissory notes sued on here attempted to be raised by the answers and pleas in abatement was that Code Ann. §37-608 (now 67-1503) - 37-611 precluded the plaintiff from bringing the suit and seeking a general judgment until the secured property had been foreclosed on and this sale confirmed. Indubitably the position is untenable, and the trial court did not err in sustaining general demurrers to these defenses and thereafter entering up a default judgment in favor of the plaintiff.* (*Emphasis Supplied*)

In Surety's view, when the facts in the record are correctly construed, the case of *Calvert Fire Ins. Co. v. Environs Development Corp.*, 601 F.2d 851 (5th Cir. 1979) supports Surety's position. The Court there reversed the same able District Judge who ruled in this case and on the same code section. *Calvert, supra,* held on P. 855:

> (5) Although no Georgia Court has yet faced a creditor's claim to insurance proceeds as loss-payee following an unconfirmed foreclosure sale, this Court is satisfied that Pringle's status as loss-payee gives it no less a separate contractual remedy than would an additional security deed on other property. Under *Salter* and *Marler*, we conclude that §67-1503 does not bar Pringle's claim to the insurance proceeds.

The U. S. Court of Appeals for the Fifth Circuit seeks

to distinguish *Calvert, supra,* on the basis that Surety's suit is on a single obligation contained in the indemnity agreement and that the indemnity agreement limits Surety only to the remedy of foreclosure.

In light of the facts in the record in this case the Court below has erroneously decided an important state question in a way which is in conflict with the foregoing applicable Georgia law, in conflict with its own *Calvert decision, supra,* and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Surety urges three points in support of this contention. (Page references from "Slip Opinion" in Appendix.)

1. SURETY'S SUIT IS NOT ON A SINGLE OBLIGATION CONTAINED IN THE INDEMNITY AGREEMENT BUT IS A SUIT ON MULTIPLE SEPARATE OBLIGATIONS IN THE SAID AGREEMENT WHICH PROVIDE SEVERAL SEPARATE FORMS OF CONTRACTUAL SECURITY.

The Court says on P. 2337 of the Opinion: "4. Here, however, Surety is suing Stanford, Sr. (Indemnitor) on a *single obligation*—that contained in the indemnity agreement. This is not a suit on separate notes or obligations; Surety itself contends that its suit is premised on comprehensive contractual obligations under the indemnity agreement." (*Emphasis Supplied*) After analysis of the case of *Calvert Fire Ins. Co. v. Environs Development Corp.,* 601 F. 2d 851 (5th Cir. 1979), the Court says on p. 2338: "No such separate agreement is alleged here. Rather, Surety seeks to recover under the single indemnity agreement. It is not clear whether the Hardendorf property security deed represents a separate agreement. It is clear however, that Surety is not suing to recover under a separate agreement; Surety seeks to recover only pursuant to the indemnity agreement . . . ".

Without in any way seeking to be presumptuous about the Court's able and lucid opinion, Surety respectfully submits that the Court's reasoning strayed to an erroneous conclusion for the reason, among others mentioned below, of the logical fallacy of equivocation, namely, the Court used the word "obligation" and the word "agreement" as both synonymous and as having different meanings.

In Divisions "1-3" of the Opinion, the Court, in its major premise, recognizes the principles: (1) That failure to confirm does not prevent a creditor from pursuing *other contractual security* on *the debt;* and (2) that if there are *separate debts* arising from *separate contractual obligations*, failure to confirm the foreclosure arising from one of the *obligations* does not bar an action on the *separate obligation, even* if the *obligations* relate to the *same subject matter.* (*Emphasis Supplied*) Both of these principles apply to the instant case.

There are multiple separate contractual obligations of Indemnitor, in the Indemnity Agreement (R-4), which provide in part:

> "3. Guarantee.
>
> "a. The Indemnitors and each of them jointly and severally guarantee the full and complete payment and performance by Agent of each and all of provisions, conditions, covenants and agreements applicable to him under the contract, Exhibit A.
>
> "b. Without limitation on the above, they and each of them jointly and severally agree to hold harmless, indemnify and reimburse Company, any insurance company whose bonds are furnished Agent pursuant to Exhibit A, and any of its co-sureties and reinsurers and any party to Exhibit A other than

Agent, against any and all liability, loss, costs, damages, claims, suits, attorneys' fees and expenses of whatever kind or nature which they or any of them may sustain or incur by reason of or in consequence Agent's conduct of a bonding business and by reason of the writing by Agent of any bonds furnished by or through Company.

"c. In the event of any failure of Agent to make payment or perform as required by Exhibit A, as aforesaid, Company shall have the right at its sole option to require any Indemnitor to make such payment or such performance or to reimburse and indemnify Company and any other persons named in subparagraph b. above. This right may be assigned by Company to any other person to whom this guarantee extends.

"d. Liability of each Indemnitor shall extend to and include the full amount of any and all money paid in good faith by Company on account of any bond in settlement or compromise of any liability thereunder under the belief that it was liable therefor, whether liable or not, as well as of any and all disbursements on account of costs, attorneys' fees and expenses as aforesaid which may be made under the belief that such were necessary whether necessary or not.

"e. In the event of payment, settlement or compromise of liability, loss, costs, damages, attorneys' fees, claims, demands, suits and judgments as aforesaid, in connection with any such bonds, an itemized statement thereof, sworn to by an officer or officers of Company or the voucher or vouchers, or the evidence of such payment, settlement or compromise shall be prima-facie proof of the fact and extent of the liability of each Indemnitor in any and all claims or suits under this Agreement."

The Indemnity Agreement provides for several forms of contractual security on the total debt. One form of

contractual security was: "All Buildup Funds on Deposit with Surety Managers, Inc." Another form of contractual security was: "Deed to Secure Debt".

Paragraph "4. a." of the Indemnity Agreement provides: "The collateral deposited or pledged by each Indemnitor is that set forth in item d. of the Schedule . . ." (referred to above). The Agreement goes on to refer to a third category of contractual security: ". . . and such other collateral as may from time to time be deposited or pledged by such Indemnitor. It is security for the performance by each Indemnitor of his Guarantee Agreement as set forth in paragraph 3. above."

The words "it is security" in the last sentence, thus refer to three different forms, categories and items of contractual security.

One of those forms of contractual security was a note for $20,000. The *collateral* for *that one note* was the security deed on the Glenwood property. (*Emphasis Supplied*). Therefore, the statement by the Court on Page 2338 of the Opinion: "It is also clear that the Glenwood property security deed is *the* collateral securing that indemnity agreement." (*Emphasis Supplied*), does not follow logically from the facts.

In addition to the 3 separate forms of contractual security above mentioned, another $20,000 note was given and the collateral for that was a security deed on the Hardendorf property. (R-73, 74, 79, 80, 81, 452), the foreclosure on which was confirmed. (R-440-443, 452, 453). The Court mentions in the Opinion, Page 2336: "Nevertheless, the 'Hardendorf property' note explicitly secures bail bonds, and not Stanford Jr.'s performance under his contract with Surety." The Court concludes on

Page 2338: "It is not clear whether the Hardendorf property security deed represents a separate agreement." Performance of Stanford, Jr.'s obligations regarding bail bonds was the very essence of his duty as Surety's agent. Hence, the securing of bail bonds was pertinent only to the extent that he *failed* to perform his contractual responsibilities. Therefore, securing of bail bonds by way of the $20,000 note and security deed on the Hardendorf property was another means of securing Stanford, Jr.'s performance under his contract with Surety.

Moreover, the Indemnity Agreement provided a fourth category of contractual security in Paragraph "6. Deposit of Reserve", under which the Indemnitor was required to deposit with Surety, on demand, an amount of money sufficient to provide a "loss reserve".

Therefore, since the note for $20,000 and its related security deed on the Glenwood property constituted only one of four forms of contractual security and only one of several contractual obligations, Surety should not be prevented from pursuing the other forms of contractual security or obtaining just satisfaction of other contractual obligations. At most, the failure of Surety to have the foreclosure sale on the Glenwood property confirmed, should bar Surety only as to a suit for a deficiency judgment on the one $20,000 note which was secured by that security deed.

At a casual glance the following statement in the Glenwood property security deed might seem to suggest a different conclusion: ". . . this note and this Deed is (sic) security for the performance by the Grantor of all of the obligations of that certain Indemnity Agreement dated, December 10, 1975." However, on closer analysis that is not the case. The wording does not say that the particu-

lar note and security deed provide the "only" security or "all" of the security. It was security, among other forms of contractual security, that could be applied to any or *all* of the multiple obligations of the Indemnitor. (*Emphasis Supplied*)

Therefore, again, it seems to Surety, that it would be very unjust to prevent Surety from pursuing the other various forms of contractual security on the basis of the several separate obligations of Indemnitor in the Indemnity Agreement. Yet, the Court below has sanctioned such injustice.

2. THE INDEMNITY AGREEMENT DOES NOT LIMIT SURETY TO THE REMEDY OF FORECLOSURE BUT PROVIDES OTHER REMEDIES.

The Court concludes on Page 2338 of the Opinion: "Because it failed to have that foreclosure confirmed, Surety has limited its remedies under that agreement, and because we can find no other remedy pursuant to that agreement, we conclude that Surety has no further claim against Stanford, Sr., under that agreement."

The Indemnity Agreement provides:

"9. SEPARATE ACTIONS. Separate suits may be brought under this agreement as causes of action accrue and suit may be brought against all of the Indemnitors or any one or more of them; and the bringing of suit or suits upon one or more causes of action, or against one or more of the Indemnitors shall not prejudice or bar the bringing of subsequent suits against all the Indemnitors or any one or more of them on any other causes of action, whether theretofore or thereafter accruing."

Therefore, by terms of the Agreement the Parties contemplated not that Surety's remedies were limited merely to collection of the one $20,000 note by foreclosure on

the Glenwood property, which was collateral therefor, but contemplated that Surety was contractually authorized to pursue various remedies until the totality of debts was justly satisfied.

3. WHATEVER RIGHTS INDEMNITOR HAD UNDER GA. CODE SECTION 67-1503, WERE WAIVED BY THE INDEMNITY AGREEMENT.

The Indemnity Agreement contains the following waiver provisions which logically cover the technical defense which Indemnitor bases upon Ga. Code Section 67-1503:

> "b. Company shall have the right to use the collateral or any part thereof in the event of any breach of any covenant of an Indemnitor as set forth herein and/or Agent. To do so it shall have the full power and authority without notice to any Indemnitor to sell such collateral or any part thereof at a public or private sale, with or without notice, or otherwise to realize on such collateral or the proceeds thereof. All expenses incurred by Company in converting collateral to cash shall be paid from the proceeds of the sale of the collateral."

> "7. WAIVERS. Each Indemnitor does hereby waive:
>
> a. All rights to claim any of his property, including homestead, as exempt from levy, execution or sale, or other legal process, under the laws of any state or states."

"8. FULL LIABILITY OF EACH INDEMNITOR. The parties hereto contemplate that there may be other guarantee or indemnity agreements affecting the obligations of Agent under Exhibit A either generally or with reference to specific acts or the writing of Agent of specific bonds. The liability of each Indemnitor shall not be affected by the liability of any other Indemnitor or guarantor whether such other liability be pursuant to this

agreement or otherwise. It is likewise contemplated by the parties that there may be other security by collateral or otherwise for such obligations. The existence of such other security shall not affect the rights of Company under this agreement. Specifically, Company has the right to require each Indemnitor to satisfy all or any part of any obligation to it under this agreement and its right shall not be aboraged, hindered or delayed in any way by any right of contribution or payment between any indemnitors or guarantors. The liability of each Indemnitor shall not be affected by the release of any other Indemnitor or of any security that may have been taken or by the return or exchange of any collateral that may have been deposited with Company. Each Indemnitor hereby consents to any such release, return or exchange."

Summary Judgment should not be granted where contracts are ambiguous. *Forrest R. B. Enterprises, Inc. v. Capricorn Records, Inc.*, 430 F. Supp. 847 (D.C. N.Y. 1977); *Cinocca v. Baxter Laboratories, Inc.*, 400 F. Supp. 527 (D.C. Okla. 1975).

The above waiver provisions cover the defense herein of Indemnitor or at the very least are ambiguous as to whether or not they apply.

Therefore, Surety's suit is not on a single obligation contained in the Indemnity Agreement but is a suit on multiple separate obligations in the said agreement which provide several separate forms of contractual security. The Indemnity Agreement does not limit Surety to the sole remedy of foreclosure but provides other remedies. Whatever rights Indemnitor had for a technical defense under Ga. Code Section 67-1503, were waived by the Indemnity Agreement.

Therefore, summary judgment for Indemnitor should not have been affirmed.

CONCLUSION

For the reason aforesaid, it is respectfully prayed that a Writ of Certiorari be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I, J. Melvin England, Attorney for the Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 28th day of May, 1981, I served three (3) copies of the foregoing Petition to the Supreme Court of the United States, for the Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, upon counsel for the Respondents, M. Leon Stanford, Jr., Rebekah Lynn Stanford, and M. Leon Stanford, Sr., by depositing the same in the United States Mail with proper postage thereon and addressed as follows:

H. Lowell Hopkins
Attorney At Law
Suite 1600
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APPENDICES

APPENDIX A

[2335] **SURETY MANAGERS, INC.,** [2335]
Plaintiff-Appellant,

v.

M. Leon STANFORD, Jr.,
Rebekah Lynn Stanford and
M. Leon Stanford, Sr.,
Defendants-Appellees.

No. 80-7281

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

Unit B

Dec. 29, 1980.

Surety brought action against indemnitor for breach of indemnity agreement. The United States District Court for the Northern District of Georgia, William C. O'Kelley, J., entered order granting indemnitor summary dismissal, and appeal was taken. The Court of Appeals, James C. Hill, Circuit Judge, held that under Georgia law, surety had limited its remedies against indemnitor under indemnity agreement where surety, which had foreclosed on two pieces of real estate claimed as security but which had had only one of the foreclosures confirmed, sued indemnitor only on obligation contained in the indemnity agreement, and the indemnity agreement specified no further remedies for surety, and thus all obligations under the indemnity agreement were discharged by the foreclosures.

Affirmed.

1. Mortgages 375

Under Georgia law, failure to confirm following foreclosure sale does not extinguish debt; it simply limits creditor's remedies. Ga.Code, § 67-1503.

2. Mortgages 375

Under Georgia law, failure to confirm following foreclosure sale does not prevent creditor from pursuing other contractual securities on debt.

3. Mortgages 375

If there are separate debts arising from separate contractual obligations, failure to confirm foreclosure arising from one of the obligations does not, under Georgia law, bar action on separate obligation, even if the obligations relate to same subject matter. Ga.Code, § 67-1503.

4. Principal and Surety 185

Under Georgia law, surety had limited its remedies against indemnitor under indemnity agreement where surety, which had foreclosed on two pieces of real estate claimed as security but which had had only one of the foreclosures confirmed, sued indemnitor only on obligation contained in the indemnity agreement, and the indemnity agreement specified no further remedies for surety, and thus all obligations under the indemnity agreement were discharged by the foreclosures. Ga.Code, § 67-1503.

Appeal from the United States District Court for the Northern District of Georgia.

Before HILL, FAY and ANDERSON, Circuit Judges.

JAMES C. HILL, Circuit Judge:

Georgia Code § 67-1503 proscribes any action to obtain a deficiency judgment when a foreclosure of real estate fails to [2336] yield the full amount of the debt, unless the foreclosing party obtains approval and confirmation of the

sale.[1] Confusion may arise, as it has here, when two pieces of real estate are claimed as security for a single agreement. Both properties were foreclosed but only one of the foreclosures was confirmed. The district court held that under the facts in this case all obligations under the agreement were discharged by the foreclosures, and we affirm.

On December 10, 1975, M. Leon Stanford, Jr. (Stanford, Jr.) contracted with Surety Managers, Inc. (Surety) to serve as Surety's local bonding agent in Atlanta, Georgia. That same day, M. Leon Stanford, Sr. (Stanford, Sr.) indemnified the performance of his son Stanford, Jr. under the agency contract with Surety. Listed as collateral in the indemnity agreement are a "Deed to Secure Debt" and "All Building Funds on Deposit with Surety Managers, Inc." The indemnity agreement specified that other collateral may be deposited and that Surety had full power to sell the collateral with or without notice in the event of breach. Also on December 10, Stanford, Sr. executed a note and deed conveying the "Glenwood property" to Surety as "security for the performance by the Grantor of all the obligations of" the indemnity agreement.

Earlier, on April 8, 1975, Stanford, Sr. had executed a

[1] Georgia Code § 67-1503 provides:

> When any real estate is sold on foreclosure, without legal process, under powers contained in security deeds, mortgages or other lien contracts, and at such sale said real estate does not bring the amount of the debt secured by such deed, mortgage, or contract, no action may be taken to obtain a deficiency judgment unless the person instituting the foreclosure proceedings shall, within 30 days after such sale, report the sale to the judge of the superior court of the county in which the land lies for confirmation and approval, and obtains an order of confirmation and approval thereon.

It should be noted that § 67-1503 is in derogation of the common law and should be strictly construed. *See First Nat'l Bank v. Kunes*, 128 Ga.App. 565, 197 S.E.2d 446 (1973).

note conveying the "Hardendorf property" to Surety "as security for any bail bonds signed by Grantor or any of his agents." Although Stanford, Jr. had not yet contracted to be Surety's bonding agent, it is apparent that this "Hardendorf property" note was executed in anticipation of such a contract. Nevertheless, the "Hardendorf property" note explicitly secures bail bonds, and not Stanford, Jr.'s performance under his contract with Surety.

Stanford, Jr. breached his agency contract with Surety. Surety, allegedly acting within its power under the indemnity agreement with Stanford, Sr., foreclosed on both the Glenwood and Hardendorf properties. Although the foreclosures did not bring the amount of the debt secured, only the Hardendorf sale was confirmed; the Glenwood sale was not.

In the present suit, Surety is suing Stanford, Sr. for breach of the indemnity agreement, as well as Stanford, Jr. for breach of the agency contract and Stanford, Jr.'s wife for breach of a separate guaranty agreement. Stanford, Sr. moved for summary dismissal, arguing that any action against him under the indemnity agreement is barred by Georgia Code § 67-1503 since Surety failed to confirm the foreclosure of the Glenwood property. Surety argues that its suit against Stanford, Sr. is not barred by § 67-1503 since it is not seeking a deficiency judgment. Rather, Surety maintains that it is pursuing "other contractual remedies" to collect the debt and that [2337] the collateral under the indemnity contract included both the Glenwood and Hardendorf properties.

The district court, after finding that various forms of collateral were provided as security for the single indemnity agreement, ruled that the mere presence of the

separate items of collateral was not controlling and Surety's failure to confirm the Glenwood property foreclosure barred any action under the indemnity agreement. Thus the district court granted Stanford, Sr. summary judgment.

[1-3] Georgia courts, in interpreting § 67-1503, have established several principles. One is that failure to confirm does not extinguish the debt; it simply limits the creditor's remedies. *See Marler v. Rockmart Bank*, 146 Ga.App. 548, 246 S.E.2d 731 (1978); *Turpin v. North American Acceptance Corp.*, 119 Ga.App. 212, 166 S.E.2d 588 (1969). Coupled with this is the principle that failure to confirm does not prevent a creditor from pursuing other contractual security on the debt. *See Salter v. Bank of Commerce*, 189 Ga. 328, 6 S.E.2d 290 (1939); *Marler v. Rockmart Bank, supra*. Similarly, if there are separate debts arising from separate contractual obligations, failure to confirm the foreclosure arising from one of the obligations does not bar an action on the separate obligation, even if the obligations relate to the same subject matter. *See Murray v. Hasty*, 132 Ga.App. 125, 207 S.E.2d 602 (1974).

[4] Here, however, Surety is suing Stanford, Sr. on a single obligation—that contained in the indemnity agreement. This is not a suit on separate notes or obligations; Surety itself contends that its suit is premised on comprehensive contractual obligations under the indemnity agreement. Surety cites this court's decision in *Calvert Fire Ins. Co. v. Environs Development Corp.*, 601 F.2d 851 (5th Cir. 1979) as support for its "comprehensive contractual obligations" theory. In *Calvert*, the lender secured its loan to the developer by accepting a security deed on property. The developer procured insurance and desig-

nated the lender loss-payee, as required by the security agreement, although the insurance covered the interests of both the lender and the developer. The property was destroyed, the developer defaulted on the loan, and the lender foreclosed on the property pursuant to the security agreement. The debt was recovered but not the attorney's fees due under the loan agreement. The foreclosure was not confirmed.

Meanwhile, negotiations began with the insurer. First, the lender, and much later the developer, filed proofs of loss. The insurer sought a declaratory judgment to determine who should benefit from the proceeds. The lender counterclaimed for the insurance proceeds and cross-claimed against the developer. The developer claimed that the lender's actions were barred by § 67-1503, and the district court agreed. We reversed, asserting that the lender's status as loss-payee gave it a separate contractual remedy. Thus the lender was not permitted to recover under the security agreement; failure to confirm the foreclosure of the security barred any such action. But the lender was permitted to sue under the separate insurance contract, which provided the lender with a separate contractual remedy—no less a separate remedy, we said, than an additional security deed or additional property would give. Thus, although the insurance contract was required under the security agreement, it was a separate agreement, and the lender was permitted to recover not pursuant to [2338] the security agreement but pursuant to the insurance agreement.

No such separate agreement is alleged here. Rather, Surety seeks to recover under the single indemnity agreement. It is not clear whether the Hardendorf property security deed represents a separate agreement. It is clear,

however, that Surety is not suing to recover under a separate agreement; Surety seeks to recover only pursuant to the indemnity agreement. It is also clear that the Glenwood property security deed is the collateral securing that indemnity agreement. Surety has acted on the indemnity agreement by foreclosing the Glenwood property. Because it failed to have that foreclosure confirmed, Surety has limited its remedies under that agreement, and because we can find no other remedy pursuant to that agreement, we conclude that Surety has no further claim against Sanford, Sr. under that agreement. Accordingly, the district court's order granting Stanford, Sr. summary dismissal is

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Filed in Clerk's Office June 27, 1979;
Ben H. Carter, Clerk; By /s/ P.H.D. Deputy Clerk.]

SURETY MANAGERS, INC. vs. M. LEON STANFORD, JR., REBEKAH LYNN STANFORD, and M. LEON STANFORD, SR.	CIVIL NO. C78-1481A

ORDER

This action is before the court on defendant M. Leon Stanford, Sr.'s and defendant Rebekah Lynn Stanford's respective motions for summary judgment. The suit involves two separate agreements whereby defendant M. Leon Stanford, Jr. became an agent of plaintiff surety company. The agency agreement was executed by defendant M. Leon Stanford, Jr. as agent and defendant Rebekah Lynn Stanford as guarantor. A separate indemnity agreement was executed between plaintiff and defendant M. Leon Stanford, Sr. By that agreement defendant M. Leon Stanford, Sr. provided collateral and agreed to guarantee the performance of M. Leon Stanford, Jr.'s obligations under the agency contract. Defendant M. Leon Stanford, Sr. bases his motion for summary judgment on plaintiff's failure to have the foreclosure sale under a security deed pledged as collateral confirmed pursuant to Ga. Code § 67-1503. The deed to secure debt was collateral specified in the indemnity agreement and contained a power of sale which was exercised by plaintiff. Although the motion is directed to only one deed to secure debt, the plaintiff, through responses to movants' discovery, has indicated that two

deeds to secure debt, two notes for $20,000, and other collateral were provided under the indemnity agreement. Plaintiff admits that powers of sale were exercised under both deeds and that no judicial confirmation was obtained. Defendant M. Leon Stanford, Sr. contends that failure to obtain such approval forecloses any recovery of a deficiency under the guaranty agreement. Plaintiff contends that this is not strictly a deficiency action but is a suit for breach of the comprehensive contractual obligations which the parties entered into.

Ga. Code § 67-1503 states that

> [w]hen any real estate is sold on foreclosure, without legal process, under powers contained in security deeds . . . and at such sale said real estate does not bring the amount of the debt secured by such deed . . . no action may be taken to obtain a deficiency judgment unless the person instituting the foreclosure proceedings shall within thirty days after such sale, report such sale to the judge of the superior court of the county in which the land lies for confirmation and approval thereon.

Initially it should be noted that section 67-1503 is in derogation of the common law and is to be strictly construed. *See First National Bank v. Kunes*, 128 Ga. App. 565 (1973). The section by its own terms applies only to actions for deficiency judgments. A deficiency is, by definition, that part of a debt secured by a deed to secure debt not realized from sale of the property given as security. Concomitantly, a judgment or decree for the amount of such deficiency is called a deficiency judgment. *See Gentry v. Hibbler-Barnes Co.*, 113 Ga. App. 1 (1966). Therefore, an action for a deficiency judgment, by definition, is available only after a foreclosure has taken place. *Cf. First Federal Savings & Loan Association v. Fisher*, 422 F. Supp. 1 (N.D. Ga. 1976).

Section 67-1503 forbids an action after foreclosure for a deficiency arising from "the debt secured by such deed." Where there are separate debts arising from separate contractual obligations, even though relating to the same subject matter, failure to obtain confirmation of foreclosure under a deed to secure debt relating to one obligation does not forclose action on the separate note. In the case of *Murray v. Hasty*, 132 Ga. App. 125 (1974), defendant purchased a house and as payment provided one note for $900.00 as down payment and executed a deed to secure debt to secure the remaining price of $13,000. Upon default, plaintiff foreclosed pursuant to a power of sale contained in the security deed. No confirmation was obtained. Subsequently, plaintiff brought suit on the note. The court held that although the security deed and the note were obligations relating to the same transaction, they were separate and distinct debts and the note was not "the debt secured by the deed." *Id.* at 125, 126. *See also Emerson v. Cousins Mortgage & Equity Investments*, 145 Ga. App. 883 (1978).

In this case, plaintiff states in his response to defendant M. Leon Stanford, Sr.'s motion that various forms of collateral were provided as security for the single indemnity agreement. That agreement states that:

> The collateral deposited or pledged by each indemnitor is that set forth in item d. of the Schedule [deed to secure debt and all buildup funds] and such other collateral as may from time to time be deposited or pledged by such indemnitor. It is security for the performance by each Indemnitor of his Guarantee Agreement . . . .

A plaintiff's own statements as well as the agreement demonstrate, there is a single indemnity obligation which is secured by several items of collateral.

It is plaintiff's contention that this suit is brought against defendant M. Leon Stanford, Sr. pursuant to the comprehensive obligations contained in the guaranty agreement. Plaintiff states that the movant deposited as collateral for that agreement two deeds to secure debt, two notes, and other funds. Plaintiff contends that because of the presence of the additional items of collateral, it was not required to obtain confirmation of the foreclosures. The mere presence of the separate items of collateral is not controlling. It is a separate obligation or debt which the Georgia courts have looked to in finding a confirmation unnecessary. Here, plaintiff alleges in its complaint that movant has breached the guaranty agreement and is therefore liable. This is not, therefore, a suit on separate notes or obligations. Instead, as against movant, it is a suit on a guaranty agreement. Any action brought pursuant to the guaranty agreement after foreclosure necessarily seeks the amount of the debt secured but not obtained by the foreclosure sale.

Consequently, the only debt which movant may owe plaintiff in this action is pursuant to the guaranty agreement. The sale of the real estate "did not bring the amount of the debt secured." Accordingly, there being no confirmation, plaintiff may not sue under the same agreement pursuant to which the foreclosure was had.

The cases relied on by plaintiff are inapposite. The cases of *Gentry v. Hibbler-Barnes Co., supra,* and *Skeffington v. Rowland,* 52 Ga. App. 619 (1935), hold that Georgia Code § 67-1503 does not require a creditor secured by realty to look only to the land for satisfaction. Such a

creditor may elect to sue on the contract or note instead of first proceeding with a foreclosure. The cases of *Vaughn & Co. v. Saul*, 143 Ga. App. 74 (1977), and *Baker v. Nei Corp.*, 144 Ga. App. 165 (1977), concerned "separate subsequent and different note[s]." *Vaughn, supra* at 77. In the case *sub judice*, plaintiff's allegations relate to a single guaranty agreement which forms the basis of the action as it relates to movant.

Plaintiff also places great reliance on *First Federal Savings & Loan v. Fisher, supra*, and *Ricks v. United States*, 434 F. Supp. 1262 (S.D. Ga. 1976). In *Fisher* the plaintiff obtained a judgment on a guaranty agreement and subsequently foreclosed on a deed to secure debt securing the guaranty agreement. No confirmation was obtained. Plaintiff sought discovery in aid of execution of judgment which plaintiff objected to on the ground that because no confirmation was obtained, no further recovery was possible. Judge Hill, formerly of this court, held that under Georgia law plaintiff could pursue satisfaction of its judgment despite lack of confirmation of the subsequent sale. The court stated that

> Georgia courts have recognized that failure to confirm a sale under power merely prevents a *subsequent* action to obtain a deficiency judgment.

422 F. Supp. at 3 [emphasis supplied]. As the court stated, plaintiff was not seeking a deficiency judgment but was, instead, seeking to enforce a judgment entered for the entire debt prior to the foreclosure. It is true that a debtor may pursue any number of remedies until a debt is satisfied. Section 67-1503 simply prohibits the bringing of an action subsequent to a foreclosure under power for a deficiency arising therefrom without first obtaining a confirmation. Here no judgment was obtained prior to

the foreclosure, and, consequently, this action is covered by the strictures of section 67-1503.

Plaintiffs' heavy reliance on *Ricks v. United States*, *supra*, is also misplaced. There, upon default, the creditor foreclosed on certain property pursuant to a power of sale contained in a deed to secure debt. No confirmation was obtained, even though the debt was not satisfied. The creditor then sought to foreclosure pursuant to a power of sale contained in a separate deed to secure debt executed as collateral for a separate guaranty agreement. However, no legal action was instituted by the creditor in that case, therefore, there was no action for a deficiency on the primary obligation as envisioned by section 67-1503. In the present case, prior to filing suit, plaintiff acted on the guaranty agreement by exercising a power of sale contained in a deed to secure debt given as collateral for that agreement. Having acted on the guaranty agreement by exercising a power of sale and having failed to obtain a confirmation within the time allowed, plaintiff may not sue to enforce the guaranty debt secured by that security deed. Accordingly, and for the above-stated reasons, defendant M. Leon Stanford, Sr.'s motion for summary judgment is hereby granted.

Also before the court is defendant Rebekah Lynn Stanford's motion for summary judgment. Said motion is based on Ga. Code § 53-503, which states in part that

> the wife may not bind that portion of her estate which is composed of tangible personal property by any contract of suretyship . . . . The sale of any portion of her separate estate which is composed of tangible personal property to a creditor of her husband shall be absolutely void.

The movant signed the agency agreement between plaintiff and defendant M. Leon Stanford, Jr. as a "Guarantor." Section 53-503 applies only to contracts of suretyship and not contracts of guaranty. *See Wolkin v. National Acceptance Co.*, 222 Ga. 487 (1966); *Rankin v. Smith*, 113 Ga. App. 204 (1966). Consequently, a wife may bind her tangible personal property to answer for her husband's debts by a contract of guaranty. For an agreement to be one of guaranty and not suretyship, there must be new, separate, and independent consideration flowing to the party who agrees to be liable for the debt of another. A mere indirect or incidental benefit resulting from the consummation of the principal contract in insufficient. Here, the proposed "Guarantor" presumably received some indirect benefit from her husband's (M. Leon Stanford, Jr.) agency contract. Such an incidental benefit is insufficient to establish a contract of guaranty. *See Southern Land & Development Co. v. Silvers*, 499 F.2d 967 (6th Cir. 1974) (applying Georgia law); *Citizens & Southern National Bank v. Mann*, 234 Ga. 884 (1975). The undisputed evidence indicates that movant is the wife of M. Leon Stanford, Jr., that she signed the agency agreement as an accommodation for her husband, that she has no interest in and has received no direct benefit from her husband's business which was the subject of the agency agreement, and that she received no consideration for assuming the "guaranty" obligation. In such a situation, the label placed on the agreement is not controlling. Since it is undisputed that no new, separate, or independent consideration flowed to movant, the contract is to be construed as one of suretyship. *See Southern Land & Development Co. v. Silver, supra; Citizens & Southern National Bank v. Mann, supra.*

As movant's agreement is one of surety, the court must

address the applicability of section 53-503 to it. That section was enacted by the General Assembly in 1969 and was in effect at the time the "guaranty" agreement was signed and at the time the suit was filed. Subsequently, the General Assembly repealed section 53-503 in its entirety. Under Georgia law, a court is required to apply the law in effect at the time of its decision. *See Muscogee County Board of Tax Assessors v. Alexander Brothers Lumber Co.*, 121 Ga. App. 800 (1970). The repeal of a law generally renders it ineffective in all pending cases. *See Gold v. Pioneer Fund, Inc.*, 107 Ga. App. 855 (1963). Where, however, the repeal of the statute affects vested rights, the repeal cannot be given retroactive effect. *See Smith v. Abercrombie*, 235 Ga. 741 (1975).

In this case the "guaranty" contract does not propose to bind only movant's tangible personal property. Instead, there is a general obligation of suretyship. In such a circumstance, section 53-503 would simply render a wife's tangible personal property immune from levy, and that section would not render her immune from judgment on the agreement. *See Judson v. Duran*, 231 Ga. 206 (1973); *Edwards v. Georgia Railroad Bank & Trust Co.*, 135 Ga. App. 186 (1975). Consequently, section 53-503 as a defense to levy would give a wife a privilege or exemption whereby certain of her property is protected. The privilege created by section 53-503 had as its purpose the protection of the "weaker sex." *See Smith v. Sandersville Production Credit Association*, 229 Ga. 65 (1972). Where a statute creating such a privilege or protection is repealed, vested rights are not affected. *See Fulton Bag & Cotton Mills v. Williams*, 212 Ga. 783 (1956); *Fulton County v. Spratlin*, 210 Ga. 447 (1954); *Bullard v. Holman*, 184 Ga. 788 (1937). As the Georgia Supreme Court stated con-

cerning laws which create statutory shields, "when the law is gone the right is gone." *Fulton Bag & Cotton Mills v. Williams, supra* at 786. Accordingly, as Ga. Code § 53-503 has been repealed, it has no effect on this action. Therefore, defendant Rebekah Lynn Stanford's motion for summary judgment is hereby denied. As previously discussed, defendant M. Leon Stanford, Sr.'s motion for summary judgment is granted.

IT IS SO ORDERED this 27th day of June, 1979.

/s/ WILLIAM C. O'KELLEY
WILLIAM C. O'KELLEY
United States District Judge

APPENDIX C
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 19__

No. 80-7281
Summary Calendar

D. C. Docket No. CA 78-1481

[Filed in Clerk's Office U.S.D.C. – Atlanta, April 24, 1981, Ben H. Carter, Clerk; /s/ By: M. Hall, Deputy Clerk.]

SURETY MANAGERS, INC.,
Plaintiff-Appellant,

versus

M. LEON STANFORD, JR.,
REBEKAH LYNN STANFORD, and
M. LEON STANFORD, JR.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

Before HILL, FAY and ANDERSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia and was taken under submission by the Court upon the record and briefs on filed pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the

District Court appealed from, in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that the plaintiff-appellant pay to the defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

December 29, 1980

A True Copy

Attested: April 21, 1981

Clerk, U.S. Court of Appeals, Fifth Circuit

By: /s/ PHYLLIS J. KEENER

Deputy Clerk

Atlanta, Ga.

ISSUED AS MANDATE: April 21, 1981

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT B

NO. 80-7281

[U. S. COURT OF APPEALS
Filed Feb. 27, 1981, Gilbert F. Ganucheau, Clerk]

SURETY MANAGERS, INC.,
Plaintiff-Appellant,

versus

M. LEON STANFORD, JR.,
REBEKAH LYNN STANFORD, and
M. LEON STANFORD, SR.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION FOR REHEARING

(February 27, 1981)

Before HILL, FAY and ANDERSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ JAMES C. HILL
United States Circuit Judge

CLERK'S NOTE:

SEE RULE 41 FRAP AND LOCAL RULE 17 FOR STAY OF THE MANDATE

APPENDIX E
SURETY MANAGERS, INC
INDEMNITY AGREEMENT

1. SCHEDULE

a. This agreement is entered into on December 10, 1975

b. It is between Surety Managers, Inc., hereinafter called Company, and

M. LEON STANFORD SR. of WALDO, FLORIDA and _____ of _____ and _____ of _____, each of whom is hereinafter called Indemnitor. It is binding on each Indemnitor's heirs or personal representatives.

c. The contract the performance of which is being guaranteed by each Indemnitor is the Local Agent's Contract of M. Leon Stanford, Jr., hereinafter referred to as Agent. A copy of said contract is attached hereto as Exhibit A and by reference incorporated herein. By signing this contract each Indemnitor acknowledges receipt of a copy of said Exhibit A.

Name of Indemnitor	Collateral Deposited
M. LEON STANFORD SR.	***Deed to Secure Debt
_____	***All Buildup Funds on
_____	Deposit with Surety
_____	Managers Inc.
_____	_____
_____	_____

2. CONSIDERATION. The consideration to each Indemnitor for the excution of this contract is the pay-

ment of One Dollar ($1.00) to each of them, receipt of which is hereby acknolwedged, the execution of Exhibit A by Company and any other persons except Agent and the furnishing of bonds to Agent pursuant to Exhibit A.

3. GUARANTEE

a. The Indemnitors and each of them jointly and severally guarantee the full and complete payment and performance by Agent of each and all of provisions, conditions, covenants and agreements applicable to him under the contract, Exhibit A.

b. Without limitation on the above they and each of them jointly and severally agree to hold harmless, indemnify and reimburse Company, any insurance company whose bonds are furnished Agent pursuant to Exhibit A, and any of its cosureties and reinsurers and any party to Exhibit A other than Agent, against any and all liability, loss, costs, damages, claims, suits, attorneys' fees and expenses of whatever kind or nature which they are any of them may sustain or incur by reason of or in consequence Agent's conduct of a bonding business and by reason of the writing by Agent of any bonds furnished by or through Company.

c. In the event of any failure of Agent to make payment or perform as required by Exhibit A, as aforesaid, Company shall have the right at its sole option to require any Indemnitor to make such payment or such performance or to reimburse and indemnify Company and any other persons named in subparagraph b. above. This right may be assigned by Company to any other person to whom this guarantee extends.

d. Liability of each Indemnitor shall extend to and include the full amount of any and all money paid in good

faith by Company on account of any bond in settlement or compromise of any liability thereunder under the belief that it was liable therefor, whether liable or not, as well as of any and all disbursements on account of costs, attorneys' fees and expenses as aforesaid which may be made under the belief that such were necessary whether necessary or not.

e. In the event of payment, settlement or compromise of liability, loss, costs, damages, attorneys' fees, claims, demands, suits and judgments as aforesaid, in connection with any such bonds, an itemized statement thereof, sworn to by an officer or officers of Company or the voucher or vouchers, or the evidence of such payment, settlement or compromise shall be prima-facie proof of the fact and extent of the liability of each Indemnitor in any and all claims or suits under this Agreement.

4. COLLATERAL.

a. The collateral deposited or pledged by each Indemnitor is that set forth in item d. of the Schedule and such other collateral as may from time to time be deposited or pledged by such Indemnitor. It is security for the performance by each Indemnitor of his Guarantee Agreement as set forth in paragraph 3. above.

b. Company shall have the right to use the collateral or any part thereof in the event of any breach of any covenant of an Indemnitor as set forth herein and/or Agent. To do so it shall have the full power and authority without notice to any Indemnitor to sell such collateral or any part thereof at a public or private sale, with or without notice, or otherwise to realize on such collateral or the proceeds thereof. All expenses incurred by Com-

pany in converting collateral to cash shall be paid from the proceeds of the sale of the collateral.

c. Each Indemnitor represents that he is the owner of any collateral which he deposits or pledges or the person entitled to deposit the same as collateral for the purposes of this agreement. Such Indemnitor agrees to jointly and severally indemnify Company and to save it harmless from the claims of any other persons, partnerships or associations to such collateral or any part thereof.

d. Collateral deposited pursuant to this agreement with Company shall be held by Company as a trustee and it shall use the same or its proceeds only for the purposes of this agreement. Provided, however, that Company shall not be responsible for any loss resulting from the sale, reinvestment, disposal or expenditure of said property or any part thereof, or for any loss resulting from the depreciation of said property or any part thereof, or from any loss of any nature whatsoever in connection with said property or any part thereof, other than a loss caused by the willful misconduct of its officers or employees.

5. RIGHTS OF COMPANY. Each Indemnitor further agrees that in addition to any other rights that it may have, Company may:

a. At any time and without notice except to Agent, cancel, change, or alter any agreements with Agent or any or all of his powers to act.

b. In the event of loss or liability under any bonds, extend the time of payment of any Indemnitor hereto or of the principal debtor or any other Indemnitor on any one or more of such bonds, and Indemnitor hereto waives notice of the execution of any bonds and of anything whatever in connection with the execution and issuance of

said bonds or any loss or liability arising therefrom.

c. At any time and without notice, increase or decrease the penalty or penalties of bonds written by Agent, change the obligees therein and execute any continuances, enlargements, modifications, renewals, or endorsements of any such bonds, or any substitute therefor with the same or different conditions, provisions and obligees, and with the same or larger or smaller penalties.

d. Take such steps as it may deem necessary or proper to obtain release from liability under any such bonds, including the right to surrender the person bailed at any time, either before or after default.

e. Adjust, settle or compromise any claim, demand, suit or judgment upon any such bonds unless an Indemnitor shall request Company to litigate such claim or demand or to defend such suit or to appeal from such judgment and shall, simultaneously with such request, deposit with Company collateral satisfactory to it, sufficient to pay any judgment rendered or that may be rendered, with interest, costs, expenses and attorneys' fees.

f. Not be obligated to execute any bonds or procure the execution thereof, either upon its full indemnity or otherwise; and any attempt on the part of Company to secure cosuretyship or reinsurance on any such bonds shall be as agent for Indemnitors, and such attempt shall not impose upon Company any separate and independent liability whatever.

g. Not be first obligated to proceed against the principal or any Indemnitor on any bond before having recourse against any and all Indemnitors hereto. Each Indemnitor hereto hereby expressly waives the benefit of

any law requiring Company to make claim upon proceed or enforce its remedies against any other persons before making demand upon or proceeding or enforcing its remedies against each Indemnitor.

h. Exercise any right or remedy which it might have if this agreement were not executed.

6. DEPOSIT OF RESERVE. In the event that any insurance company whose bonds are furnished to Agent pursuant to Exhibit A should deem it necessary or proper in order to comply with the law or with the regulation or requirement of an Insurance Department to set aside as loss reserve an amount to cover any judgment that may have been rendered against it on bonds written by Agent with interest and costs or to cover any unadjusted claim or claims under said bonds, any Indemnitor will, immediately upon demand and notwithstanding any further proceedings that may have been taken or that may be contemplated, and notwithstanding the pendency of any appeal, deposit with Company an amount of money sufficient to cover such judgment, with interest and costs or such claim or claims. Such sums to be forwarded by the Company to the insurance company to be held as collateral security on said bonds with the right on the part of the insurance company at any time to use such sum, or any part thereof, in payment of such judgment or in the settlement of such claim or claims. Demand upon any Indemnitor shall be sufficient if sent by mail to him at the address given by him to Company or at his address last known to Company, whether actually received or not.

7. WAIVERS. Each Indemnitor does hereby waive:

a. All rights to claim any of his property, including homestead, as exempt from levy, execution or sale, or

other legal process, under the laws of any state or states.

b. Any defense based upon the execution of this agreement subsequent to any act of Agent or to the date of the writing by Agent of the bonds, which gave rise to the obligations of the Agent and consequently of the Indemnitor.

c. Notice of any breach, or breaches of any bonds or any contract or contracts in connection with which such bonds may have been given, or any act or default that may give rise to claim hereunder.

d. Any right to ask or require the Company to remove or join in any application for the removal of any proceeding from a state court to a federal court or vice versa.

e. Notice of the acceptance of this obligation and of execution of any such bonds;

f. The execution of this agreement by Agent or any other Indemnitor.

8. FULL LIABILITY OF EACH INDEMNITOR. The parties hereto contemplate that there may be other guarantee or indemnity agreements affecting the obligations of Agent under Exhibit A either generally or with reference to specific acts or the writing of Agent of specific bonds. The liability of each Indemnitor shall not be affected by the liability of any other Indemnitor or guarantor whether such other liability be pursuant to this agreement or otherwise. It is likewise contemplated by the parties that there may be other security by collateral or otherwise for such obligation. The existence of such other security shall not affect the rights of Company under this agreement. Specifically, Company has the

right to require each Indemnitor to satisfy all or any part of any obligation to it under this agreement and its right shall not be abrogated, hindered or delayed in any way by any right of contribution or payment between any indemnitors or guarantors. The liability of each Indemnitor shall not be affected by the release of any other Indemnitor or of any security that may have been taken or by the return or exchange of any collateral that may have been deposited with Company. Each Indemnitor hereby consents to any such release, return or exchange.

9. SEPARATE ACTIONS. Separate suits may be brought under this agreement as causes of action accrue and suit may be brought against all of the Indemnitors or any one or more of them; and the bringing of suit or suits upon one or more causes of action, or against one or more of the Indemnitors shall not prejudice or bar the bringing of subsequent suits against all the Indemnitors or any one or more of them on any other causes of action, whether theretofore or thereafter accruing.

10. The parties hereto recognize that Company will furnish Agent bonds of an authorized insurance company which it has agreed to hold harmless from loss thereon. For the purposes of this agreement any liability, loss or other matter referred to in paragraph 3 of said insurance company shall be deemed a liability of Company and subject to this guarantee. The parties also recognize that Company has the right to terminate Exhibit A as provided therein and that its ability to furnish Agent with bonds is contingent upon its ability to secure the same from an authorized insurance company. It makes no warranty or guarantee of such ability.

11. This is a California contract and is to be construed in accordance with the laws thereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date above written.

Witness:	SURETY MANAGERS, INC.
/s/ Tom Blalock	/s/ By Ray Jones
	(Title) Vice President
Witness:	
/s/ Tom Blalock	/s/ M. Leon Stanford Indemnitor, Jointly and Severally
	Indemnitor, Jointly and Severally
	Indemnitor, Jointly and Severally

APPENDIX F

☐ SURETY INSURANCE COMPANY OF CALIFORNIA

XX SURETY MANAGERS, INC.

(Paragraph 17 Applicable)

AGENT'S CONTRACT

This contract is entered into on December 10, 1975, between the Corporation checked above, hereinafter called Surety, and M. Leon Stanford, Jr. hereinafter called Agent.

1. The territory for which Agent is appointed is the city of Atlanta and the county of Fulton in the State of Georgia.

2. Agent shall maintain his principal office in Atlanta, Georgia.

3. The security deposited by Agent in the "Agent's Indemnity Fund" at the commencement of this contract is Assignment of Collateral on deposit with Surety Managers, Inc., Promissory Note and Deed to Secure Debt.

4. Additional deposits shall be made by Agent at the rate of one percent (1%) of the face amount of the bonds written by or through Agent, except as follows: No Exceptions.

5. The charge which Agent shall pay Surety for bonds is one and eight-tenths percent (1.8%) of the penal amount of each bond.

6. Surety does hereby appoint Agent as a Local Agent for the purpose of the transaction of bail and bonds in said territory. Agent accepts such appointment and agrees that he will, during the duration of this agreement, transact no such bonds except for Surety. Agent agrees to accept such bond limits and other underwriting restric-

tions as Surety shall from time to time impose. He agrees to produce each defendant released by him as required by the court and to either secure the exoneration of each bond placed by or through him or to pay for any forfeiture thereof. He agrees to pay all expenses of the agency including those arising out of bonds written by him.

7. Agent may request Surety to secure the placing of bonds which he is unable, by reason of the terms of this contract or otherwise, to write. If Surety is able to secure the placing of such bonds they shall be deemed written under this contract and all the terms herein (including particularly Paragraphs 12 and 13) shall be applicable thereto except that Agent's compensation shall be allowed only if lawful and shall be reduced by any usual posting fees and expenses.

8. Surety agrees to furnish the Agent with such application forms, bonds, powers of attorney, indemnity agreements, deeds of trust, and other similar matters as may be necessary to enable him to carry out this contract. Agent shall not alter such forms without Surety's written consent.

9. Agent shall keep complete records in such form as Surety and the regulatory authorities of said State may require. All such records and all books of account, documents, vouchers, memoranda and other writings connected with the business of Agent shall be open at all times to Surety. Agent shall transmit to Surety, in accordance with Surety's instructions, reports on all bonds written by or through Agent, showing such information as Surety may require.

10. Agent shall charge and collect premiums and where permitted by law, annual renewal premiums on all bonds

written by him, through him or at his request, at such rates as shall be prescribed by Surety. No credit is extended to Agent for such premiums and they, less the Agent's compensation, shall be paid to Surety whether collected or not. Agent is responsible for the premium, less his compensation, for the maximum amount on all powers of attorney issued to him and not accounted for.

11. Agent's compensation (commission) shall be the difference between the premium collected in accordance with Paragraph 10 and the charges provided in Paragraph 5. This shall be Agent's sole renumeration and Surety shall not be responsible for any expenses of conducting the agency.

12. Agent will indemnify Surety and hold it harmless from any and all liability, loss, costs, damages, claims, suits, attorneys fees and expenses of whatever kind or nature which it may sustain or incur as a result of or in connection with any business transacted by or through Agent. If Agent shall fail to discharge this obligation, Surety may do so at the expense of Agent and, if legal action is necessary to secure its discharge and Surety is the prevailing party, it shall also be entitled to reasonable attorney's fees. Surety and its assignees may enforce this indemnity agreement irrespective of the existence of reinsurance or the existence of any other indemnity or indemnity agreement or of collateral. Provided, however, that to the extent of his indemnification Agent shall be entitled to an assignment of any specific indemnity or collateral.

13. Agent's Indemnity Fund shall consist of the deposits described in Paragraphs 3 and 4 hereof, and any other deposits, securities, or other valuable matters designated as being a part thereof. It shall be security for

the performance by Agent of all of his obligations under this contract. No portion thereof shall be returned to Agent except with the consent of Surety, unless this agreement is terminated and Agent has satisfied all of his obligations under this contract, particularly those with respect to securing evidence of the termination of all bonds written by or through him. If it appears that it will be necessary for Surety or any person protected by said Fund, to incur any expense or liability (including all matters mentioned in Paragraph 12) then Surety shall have the right to withdraw from such Fund whatever sum may be necessary to reimburse itself or such person or to make direct payment of such matter. If, before termination of this contract, it is necessary for Surety to make any withdrawal from the Fund to pay any loss, Surety may charge $10.00 per withdrawal.

14. All monies, securities, and other collateral received by Agent in connection with business placed through Surety shall be forwarded by him to Surety in accordance with such instructions as may from time to time be given to him.

15. This agreement may be terminated by either party on thirty days' written notice, but may be terminated at any time without notice if the other party is in substantial default under this contract. Upon any such termination the transaction of any new business under this contract shall immediately cease; however, Agent shall continue to carry out his other obligations during the period of the running off of the bonds written by him pursuant to this contract. Agent's obligation therefor shall not terminate until he has through the securing of exonerations or otherwise, procured evidence satisfactory to Surety that liability on all bonds written by or through him has been terminated.

16. (a) If Agent is designated as a Local Agent, all business transacted pursuant to this contract shall be placed directly with Surety.

(b) If Agent is designated as an Executing Agent, all business shall be placed with Surety through the Supervising Agent who has executed this contract in such capacity. Unless otherwise instructed by Surety, said Supervising Agent may act for Surety in enforcing this contract and reports, collateral, premiums, less Agent's compensation, and deposits in the Indemnity Fund, shall be made through him. The obligations of the Supervising Agent to Surety on bonds written by or at the request of the Executing Agent may be indemnified or paid out of the Agent's Indemnity Fund.

(c) If this contract be executed by Agent as a Supervising Agent, it is agreed that it includes within its terms all bonds written or placed into effect by or through the actions of all Executing Agents whose contracts have been signed by him as Supervising Agent. The bonds of said Agents are to be deemed bonds written through said Supervising Agent and the Indemnity Agreements and use of Indemnity Funds as set forth herein specifically are intended to apply to said bonds.

17. This paragraph is applicable only to Surety Managers, Inc. contracts. With respect thereto the parties recognize that Surety is acting as a general agent for one or more authorized insurance companies and where appropriate reference to Surety shall include reference to any such insurance company. Specifically:

(a) The bonds furnished and the premium rates charged shall be those of such company;

(b) The indemnity agreement and the Agent's

Indemnity Fund are for the benefit of such company but only if Surety Managers, Inc. shall have failed to discharge its obligations to it. Otherwise Surety Managers, Inc. may enforce in its own name the rights of such company against Agent;

(c) During the term of this contract Agent's representation of such company shall be only pursuant to this contract and through Surety Managers, Inc.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date above written.

☐ SURETY INSURANCE COMPANY OF CALIFORNIA

X SURETY MANAGERS, INC.

/s/ By RAY JONES

Ray W. Jones, Vice President

/s/ M. LEON STANFORD, JR.

Agent M. Leon Stanford, Jr.

Supervising Agent

(To be signed for Executing Agents' Contracts)

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GUARANTY AGREEMENT

The undersigned have requested the execution of the above contract and in consideration of the execution of it, each of us jointly and severally do hereby unconditionally guarantee and agree to be bound to Surety Insurance Company of California or Surety Managers, Inc. as the case may be, for full and complete payment and performance by Agent of all provisions, conditions, covenants and agreements contained in the above contract.

IN WITNESS WHEREOF the undersigned have hereunto set our hands this 10 day of December 1975.

Witness:

/s/ Tom H. Blalock

_____ /s/ Rebekah Lynn Stanford
Guarantor, Rebekah Lynn Stanford

_____ _____
Guarantor